

Public Prosecutor v Thavananthan

A

HIGH COURT (KUALA LUMPUR) — CRIMINAL APPEAL (REHEARING)
 NO 42-70-1993
 SYED AHMAD IDID J
 25 APRIL 1994

B

Evidence — Accomplice — Corroboration — Overwhelming evidence of guilt — Whether corroboration necessary

Evidence — Accomplice — Meaning — Whether agent of prosecution was accomplice — Whether corroboration necessary

C

Evidence — Character evidence — Bad character of witness — Failure of trial judge to state which part of evidence not reliable — Whether probative value of evidence outweighed prejudicial value

Criminal Procedure — Close of prosecution case — Prima facie case — Test applicable

D

Criminal Procedure — Sentencing — Corruption — Mitigating factors — Whether loss of employment a mitigating factor

The accused, a magistrate, was charged with two counts of corruptly accepting gratification which was punishable under s 4(a) of the Prevention of Corruption Act 1961. The accused was acquitted and discharged on both charges by the sessions court judge who found that the prosecution had failed to prove its case against the accused. The prosecution appealed to the High Court which dismissed the acquittal on the first charge but allowed the appeal on the second charge of corruptly accepting RM15,000. The High Court found that there was sufficient evidence at the close of the prosecution case to call for the defence on the second charge.

E

The case against the accused was reheard in the High Court. The defence urged the court to treat the court interpreter, SP4, who assisted in passing the money to the accused, as an accomplice and asserted that corroboration of his evidence was necessary. On the other hand, the prosecution contended that the accused had to prove that the money was not corruptly received.

F

G

Held, convicting the accused:

H

- (1) There was overwhelming evidence against the accused without corroboration of the evidence of SP4 who had acted on the instructions of the accused. In any event, a witness who has made himself an agent for the prosecution before the actual commission of the offence, as SP4 had done, is not an accomplice. There was also no merit in the finding of the sessions court judge that SP4 had tried to shift the blame on the accused in order to save himself.

I

- A (2) The sessions court judge had also failed to specify which parts of the evidence of the prosecution witness, SP3, could not be believed because of his bad character. The evidence should therefore be accepted because its probative value outweighed its prejudicial value.
- B (3) The High Court had correctly applied the test of maximum evaluation of the evidence as laid down in *Khooh Hi Chiang v PP and another appeal*²⁵ when calling for the defence. Once there was a finding that money was passed to the accused, he had to show that the money was not corruptly received or that it was innocently given.
- C (4) It was indeed a tragedy that the accused, who was placed in a position of trust and honour, had decided to abuse it. In view of the type of offence, the position that had been abused and the seriousness of the crime, the accused was sentenced to a fine of RM5,000 (in default 12 months' imprisonment) and three years' imprisonment. The loss of his employment was not a mitigating factor because the accused, by committing the act of corruption, had himself terminated his service.
- D

[Bahasa Malaysia summary]

- E Tertuduh, seorang majistret, telah dituduh atas dua tuduhan menerima rasuah yang boleh dihukum di bawah s 4(a) Akta Pencegahan Rasuah 1961. Tertuduh telah dibebaskan dan dilepaskan atas kedua-dua tuduhan itu oleh hakim mahkamah sesyen yang memutuskan bahawa pihak pendakwa telah gagal membuktikan kesnya terhadap tertuduh. Pihak pendakwa telah membuat rayuan kepada Mahkamah Tinggi yang telah menolak rayuan terhadap pembebasan atas tuduhan pertama tetapi membenarkan rayuan terhadap tuduhan kedua, iaitu menerima rasuah sebanyak RM15,000. Mahkamah Tinggi berpendapat bahawa terdapat keterangan yang mencukupi pada penutup kes pihak pendakwa untuk memanggil supaya pembelaan dibuat atas tuduhan kedua.
- F

- G Kes terhadap tertuduh telah dibicara semula di Mahkamah Tinggi. Pihak pembela telah memujuk mahkamah supaya menyifatkan penterjemah mahkamah, SP4, yang telah menolong memberikan wang itu kepada tertuduh, sebagai seorang rakan sejenayah dan menegaskan bahawa sokongan keterangannya diperlukan. Sebaliknya, pihak pendakwa pula menegaskan bahawa tertuduh dikehendaki membuktikan bahawa wang itu tidak diterima sebagai rasuah.
- H

Diputuskan, menyabit tertuduh:

- I (1) Sudah terdapat bukti yang amat ketara terhadap tertuduh tanpa sokongan keterangan SP4 yang telah bertindak atas arahan tertuduh. Bagaimanapun, seorang saksi yang telah menjadi agen pihak pendakwa sebelum kesalahan itu dilakukan, seperti SP4, tidak merupakan seorang rakan sejenayah. Juga tidak ada merit di dalam keputusan hakim mahkamah sesyen bahawa SP4 telah mencuba menyalahkan tertuduh untuk menyelamatkan dirinya.

- (2) Hakim mahkamah sesyen juga telah gagal menyatakan dengan spesifik bahagian mana keterangan saksi pihak pendakwa, SP3, yang tidak boleh dipercayai kerana wataknya yang buruk. Oleh itu, keterangan itu harus diterima kerana nilai kejujurannya melebihi nilai kemudaratannya. A
- (3) Mahkamah Tinggi telah memakai ujian penilaian maksimum keterangan secara betul seperti yang ditetapkan di dalam *Khoo Hi Chiang v PP and another appeal*²⁵ apabila memanggil supaya pembelaan dibuat. Sebaik sahaja terdapat suatu keputusan bahawa wang telah diberikan kepada tertuduh, beliau dikehendaki menunjukkan bahawa wang itu tidak diterima sebagai rasuah atau bahawa ianya telah diberikan tanpa niat salah. B C
- (4) Memang menjadi suatu tragedi bahawa tertuduh, yang telah diletakkan di dalam suatu kedudukan yang beramanah dan mulia, telah menyalahgunakan kedudukannya. Memandangkan jenis kesalahan itu, kedudukan yang telah disalahgunakan dan betapa seriusnya perbuatan jenayah itu, tertuduh dihukum denda sebanyak RM5,000 (atau 12 bulan penjara jika ingkar membayar denda) dan penjara tiga tahun. Kehilangan pekerjaan tidak merupakan suatu faktor peringanan kerana tertuduh, dengan melakukan perbuatan rasuah itu, telah menamatkan perkhidmatannya sendiri.] D

[*Editorial Note*: The defendant has appealed to the Supreme Court.] E

Notes

For cases on the meaning of accomplice, see 7 *Mallal's Digest* (4th Ed) paras 42–47 and 52–54.

For cases on mitigating factors in sentencing, see 5 *Mallal's Digest* (4th Ed) paras 2239–2247; [1991] *Mallal's Digest* 934; and [1992] *Mallal's Digest* 808–830. F

Cases referred to

- 1 *Gooi Loo Seng v PP* [1993] 2 MLJ 137 (distd)
 - 2 *Chean Siong Guat v PP* [1969] 2 MLJ 63 (folld)
 - 3 *Mohamed Mokhtar v PP* [1972] 1 MLJ 122 (folld)
 - 4 *Rattan Singh v PP* [1971] 1 MLJ 162 (distd)
 - 5 *PP v Yuvaraj* [1969] 2 MLJ 89 (refd)
 - 6 *Sathasivam & Ors v PP* (1949) MLJ (refd)
 - 7 *DPP v Kilbourne* [1973] AC 729; [1973] 1 All ER 440; [1973] 2 WLR 254 (refd)
 - 8 *Tengku Mahmood v PP* [1974] 1 MLJ 110 (refd)
 - 9 *PR Iwn Ahmad bin Semial* [1993] 2 CLJ 311 (refd)
 - 10 *PP v Lim Eng Chye* [1978] 1 MLJ 200 (refd)
 - 11 *Darshan Lal v Delhi Admin* AIR 1074 SC 218 (refd)
 - 12 *Khoo Cheng Huat v PP* [1991] 1 MLJ 43 (refd)
 - 13 *TN Nathan v PP* [1978] 1 MLJ 134 (refd)
 - 14 *Syed Abu Bakar bin Ahmad v PP* [1984] 2 MLJ 19 (refd)
 - 15 *PR v Kang Ho Soh* [1992] 1 MLJ 360 (refd)
- G
H
I

- A 16 *Shanmugan v PP* [1963] MLJ 125 (refd)
 17 *PP v Padi bin Abdullah* [1989] 2 MLJ 60 (refd)
 18 *PP v Mohamed Ali* [1962] MLJ 257 (refd)
 19 *Attan bin Abdul Gani v PP* [1970] 2 MLJ 143 (refd)
 20 *Ramly bin Md Yassin & Ors v PP* [1982] CLJ 200 (refd)
 B 21 *PP v Teh Cheng Poh* [1980] 1 MLJ 251 (refd)
 22 *Mohamed Mokhtar v PP* [1972] 1 MLJ 122 (refd)
 23 *Lionel de Silva v R* [1956] MLJ 203 (refd)
 24 *PP v Ling Tee Huah* [1982] 2 MLJ 324 (folld)
 25 *Mohd Mocta bin Shariff v PP* [1983] 2 CLJ 216 (folld)
 26 *Khoo Hi Chiang v PP and another appeal* [1994] 1 MLJ 265 (folld)

C *Ahmad bin Bache* (Deputy Public Prosecutor) for the appellant.
S Menon (*Christopher Fernando* with him) (*Majid Krishna Menon & Lee*)
 for the respondent.

D **Syed Ahmad Idid J:** 'It is not every day that a magistrate is arrested', so declared the learned counsel for the respondent. Then again, 'He (ie DW2, Aslam bin Zainnudin) as a magistrate should have made a report to the Badan Pencegah Rasuah and he did not file an affidavit' declared the learned deputy public prosecutor. Both statements reflect poorly on the magistracy.

E *Appeal by the public prosecutor*

I have with me the public prosecutor's appeal against the acquittal of magistrate, Thavananthan, on the charge of corruptly accepting a gratification of RM15,000. It was alleged that the acceptance of the cash was at about F 9.15am on 28 November 1992 at the chambers of the Magistrates' Court in Kuala Lumpur. The offence is punishable under s 4(a) of the Prevention of Corruption Act 1961.

For the re-examination of this case, I have the benefit of:

- (a) all the notes of proceedings;
 G (b) the appeal records, Bah 1 and 2, with the exhibits;
 (c) the 'alasan penghakiman' dated 8 March 1993 (pp 124-144) when the learned sessions court judge acquitted and discharged the accused (or respondent here) without calling for his defence on two charges;
 (d) the 'alasan penghakiman' (pp 46-52 of Bah 2) dated 23 September
 H 1993 when the same learned sessions court judge again acquitted and discharged the accused, this time on the one charge which the High Court had ordered him to call for the defence; and
 (e) the submissions and arguments by the learned deputy public prosecutor and learned counsel for the respondent before me.

I *Misconceptions banished*

Before I go into the facts and principles of this appeal, there is need to flush out any uncertainties which may exist:

- (1) that the learned sessions court judge was protecting his colleague when he quickly acquitted and discharged the accused on both occasions. The learned sessions court judge gave his reasons for his decisions; and
- (2) that the court will readily find its own official guilty whenever a charge is levelled against him. This cannot be true because courts have to comply with the requirements of s 173(f) of the Criminal Procedure Code (FMS Cap 6) in that there must be evidence which warrants a conviction before such decision can be arrived at.

A

B

The charge against Mdm Wong and the offer to set her free (which led to the corruption trial)

C

Madam Wong Sow Ying was charged for assisting in the carrying on of a public lottery under s 4A(a) of the Common Gaming Houses Act 1953 (fine of between RM20,000 and RM200,000 and liable also to imprisonment of up to 5 years). She was first produced in the magistrates' court on 18 October 1990. According to the learned sessions court judge:

D

Kes ini (loteri) telah disebut beberapa kali di hadapan beberapa orang majistret dan akhirnya dibicarakan di hadapan tertuduh. Mengikut SP1, tarikh perbicaraan telah ditetapkan pada 8 Jun 1992, ditunda kepada 14 Julai 1992, kemudian pada 20 Julai 1992 dan seterusnya 25 Ogos 1992 dan kemudian kepada 17 September 1992, selanjutnya kepada 22 Oktober 1992 dan akhirnya pada 28 November 1992.

E

According to Mdm Wong, she 'telah dibicarakan di hadapan tertuduh dan pada hari itu juga, jurubahasa (SP4, Ong Leong Chuan) berjumpa saya dan memberitahu saya kalau kes ini hendak diselesaikan saya boleh bayar RM15,000'. According to SP4, 'dalam bulan Oktober 1992, Tuan Thava (the respondent) ada memberi saya "indication" bahawa kes ini boleh dibebaskan jika ada tawaran. "Indication" ialah tawaran sebanyak RM15,000'.

F

After this indication, SP4 started to work on it. Madam Wong and SP4 agreed that they met on this matter on 22 October 1992 where 'kes ini disambung bicara' SP4 informed the accused regarding Mdm Wong's agreement to pay RM15,000. Then, on 3 November 1992, the case was continued but adjourned to 28 November 1992 for a decision.

G

The learned sessions court judge found it as a fact that SP2, Mdm Wong, had agreed to pay RM15,000 but requested for time in order to obtain the money. In her efforts, she informed her son of the indication and the son duly met his employer, William Por Choo Aik, and told him of the purpose of the loan he was seeking. William Por (SP3) agreed to lend him the money and he met SP4 whom he had known for about two years. SP4 confirmed the indication and told SP3 that the money was for his boss, ie the respondent. Following this, several meetings were held and among them was the lunch at Grand Pacific Hotel which become a subject of the first charge as amended.

H

I

The learned sessions court judge had accepted that:

- A Menurut keterangan SP3 dan SP4, SP4 telah memperkenalkan tertuduh kepada SP3 dan memberitahu SP3 bahawa tertuduh adalah majistret yang membicarakan kes judi haram SP2. Kedua-dua SP3 dan SP4 seterusnya membincangkan perkara bayaran wang RM15,000. Menurut kedua-dua orang saksi ini semua perbincangan dan perbualan di antara mereka berdua adalah di dalam Bahasa Hokkien; tertuduh hanya tersenyum dan mengangguk-angguk kepalanya apabila namanya disebut di dalam perbualan itu. Menurut SP4, di sepanjang perbualan di antara beliau dengan SP3, tertuduh hanya berdiam diri dan tidak berkata apa-apa.
- B

- C Within the twinkle of an eye, the sessions court judge decided that the prosecution had failed to prove its case against the accused. I am of the opinion that courts should not adopt the ostrich stand 'iaitu burung unta sembunyi matanya ke dalam pasir dan tidak ambil berat kepada keadaan sekelilingnya'. Why join someone you do not know? And why tolerate and 'senyum and angguk-angguk kepala' when you are being subjected to a conversation in a different language if you did not subscribe to it? In the final analysis, however, the High Court gave the benefit of the doubt and dismissed the appeal against acquittal on that charge.
- D

So we are left with the appeal on the one (or what was previously the second) charge. From the learned deputy public prosecutor's point of view, what remains is simple: the respondent must prove it was not corrupt money that he received.

- E Around this issue lies a load of arguments and submissions of both principles of law and what inferences the court can make of the facts. The learned counsel for the respondent urged the court to treat the evidence of William Por, interpreter Ong and both the BPR officers, Won Koh Haw and Abdul Aziz Ishak, as not worthy of credence and to reject them but instead accept the evidence from the respondent and his brother magistrate, DW2.
- F

Facts from the appeal records

- G I need not delve into the several facets of interpretation which learned counsel had put on each activity which occurred in the case. Suffice if I refer to the facts as found by the learned sessions court judge regarding the charge under appeal.

- H (1) 'Lanjutan kepada beberapa siri perbincangan mengenai bayaran RM15,000', di antara lain, SP3 telah meminta kepada SP4 supaya bayaran RM15,000 itu dapat dikurangkan. SP4 telah memberitahu SP3 bahawa permintaan ini tidak dapat dipersetujui. Ini, menurut SP3, telah menimbulkan kemarahannya dan telah mendorong beliau membuat pengaduan kepada BPR.'

- I (2) The trap at the Restoran Sakura was not successful. According to the appeal records:

Berikutan dengan ini pegawai-pegawai BPR telah menyerbu dan menahan SP4 dan telah dibawa balik ke pejabat BPR. Begitu juga dengan SP3.

Siasatan telah dijalankan ke atas SP4. Sebagai balasan SP4 menawarkan untuk bekerjasama dengan BPR dan bersetuju untuk menolong memerangkap tertuduh dengan menyerahkan wang perangkap sebanyak RM15,000 kepadanya.

A

- (3) The day of the arrest, ie 28 November 1992.

SP4 went to his office in the morning as usual, then to pejabat BPR with SP3. SP3 was asked to meet the accused and hand the money in chambers himself. The trap money was handed to SP3 and they left for the court. Within the court precincts, SP3 again said that the accused did not wish to meet him. It was at this stage that the money was passed by SP3 to SP4 in the toilets.

B

C

- (4) Outside the magistrates' chambers.

SP4 entered the chambers where the accused was and 'menyerahkan wang perangkap kepada beliau'. At the same time when SP4 was inside, 'seorang penghantar saman bernama Rajendran, masuk ke kamar tertuduh'. SP4 then went outside and 'memberi isyarat "thumb-up" kepada SP5, yang sedang menunggu di hujung bangunan mahkamah. SP5 terus berjalan menuju ke pejabat pentadbiran yang terletak di luar kamar tertuduh. SP5 tidak terus masuk ke kamar tertuduh tetapi menunggu di luar selama 1-2 minit menanti ketibaan pegawai-pegawai BPR yang lain'.

D

E

- (5) Inside the chambers.

'Menurut SP4, tertuduh telah mengunci pintu kamarnya dan dia melihat tertuduh mengira wang. Kemudian beliau terdengar bunyi orang cuba membuka pintu kamar dari luar beberapa kali. SP4 membuka kunci dan SP5 pun masuk diikuti oleh seorang pegawai BPR lain, Abdul Aziz bin Ishak (SP6)'.

F

Now we go to the evidence of SP4 who stated:

Di dalam kamar saya serahkan wang itu kepada beliau (iaitu tertuduh).

Selepas saya serahkan wang itu kepada Thava, Rajendran masuk. Saya pun keluar. Tuan Thava menyimpan wang tersebut di dalam poketnya. Duit itu berada di dalam bentuk yang sama seperti saya terima.

G

- (6) An important piece of evidence.

SP4 said (and this is recorded in the records):

Saya lihat tertuduh mengunci pintu (pintu ke kamarnya). Saya nampak beliau mengira wang tersebut.

H

- (7) Then what happened?

From the outside, SP5, Won, explained:

Pada masa yang sama saya menghampiri kamar majistret dan cuba membuka pintu tetapi berkunci dari dalam. Saya cuba membuka sekali lagi. Kemudian saya terdengar 'clicking sound'.

I

A (8) Where did the clicking sound come from?

According to SP4 'apabila dengar bunyi ada orang hendak membuka pintu, saya pun membuka kunci pintu tersebut'.

B The learned sessions court judge explained why he did not wish to believe that the incident indeed took place. The 'alasan penghakiman' at p 133 states: 'Menurut SP4, sebaik sahaja SP5 masuk ke kamar tertuduh, ia (SP5) terus bertanya, "Where's the money?"' On that score, the learned sessions court judge held the opinion that:

Ini sungguh berbeza sekali dengan versi SP5. SP5 menafikan bahawa beliau ada bertanya tertuduh, 'Where's the money?' sebaik sahaja ia masuk.

C On p 75 of the notes of proceedings, SP5 said: 'Saya soal (pihak menentang) siapa yang berikan wang itu dan untuk apa? Tertuduh (dan pihak menentang di sini) ada menjawab, "I don't know. What money?"'

D Going back a bit, SP5, Won, stated: 'Apabila saya masuk memperkenalkan diri saya dan dalam masa yang sama Thava (the respondent here) melepaskan wang.' The judge recorded that 'SP5 memungut wang tersebut dari atas lantai dan memeriksanya dengan senarai nombor siri yang telah disediakan, di hadapan tertuduh'. Despite such evidence the sessions court decided to disbelieve the witnesses.

E *Discrepancies and contradictions: how vital?*

The lower court discussed 'discrepancies' and roamed home. I shall outline them here:

(a) The pager.

F SP3, 'Saya tak ada belikan "pager" untuk Ong (SP4)'. SP4, 'William (SP3) ada beri saya satu "pager" sebab ia hendak berhubung dengan saya'.

The sessions court judge (at p 136) observed:

G Sehubung dengan ini mahkamah mempunyai sedikit persepsi bahawa ada sesuatu yang tidak kena mengenai perhubungan SP3 dan SP4.

Unfortunately, the impact of the relationship was not explained, ie whether the evidence became untruths or which parts cannot be believed as a result of such relationship.

(b) Evidence of bad character.

H

The lower court said this:

Adalah 'pertinent' disebutkan di sini bahawa pihak pembelaan di dalam soal balas ke atas SP3 telah menimbulkan keterangan 'evidence of bad character' SP3. Mahkamah telah membenarkan isu 'evidence of bad character'.

I But the learned judge failed or neglected to specify the parts of SP3's evidence which cannot be believed. It must be borne in mind that SP3's participation was not on his own initiative but rather he was

invited into it merely on the ground he was Mdm Wong's son's employer. The probative value of the evidence outweighs its prejudicial value.

(c) Is Ong, SP4, the star witness?

The lower court found that he 'started the ball rolling' (at p 137 of the records) and that he was in a situation where 'it's either his own neck or someone else's neck. And so he became vulnerable'.

Ong's situation can be likened to that of a dog who was directed by its owner to carry poisoned food to a man whom the master wanted to kill. If the man died in consequence the owner is the murderer, not the dog who was merely a conduit. Ong, it seems to me was under the magistrate's instructions. Magistrates cannot be under the thumb of an interpreter. So I am not able to agree with the lower court's observations that Ong had to plant the money in the appellant's chambers as 'his own life was at stake'. Also bear in mind, he was in the clear when he was found outside the Sakura Restaurant with no corrupt money. So why indeed should he fear for his future?

(d) It was debated and ventilated that the words 'dijumpai di atas lantai tepi kabinet dalam kamar OKT oleh Won Kok Haw' can only mean that the money was found after a search. The sessions court judge held that:

Perkataan 'dijumpai' mempunyai 'connotation' bahawa sebelum wang tersebut didapati, perbuatan mencari telah dilakukan, atau wang tersebut telah sedia ada di tempat di mana ia diperolehi.

I am unable, with respect, to agree with that. If every court case has to fall into the abyss of semantics, then the court is another linguistics department. Courts must meet the standards of reality. So let us see further.

SP5 said:

Sewaktu saya masuk ke dalam kamar saya nampak wang itu di dalam tangan kanannya. Sebaik saja nampak saya ia melepaskan wang itu ke atas lantai. Lelaki India ini ialah OKT (OKT dicam). (The respondent was identified).

The witness then added:

Sebaik sahaja melepaskan wang tersebut lelaki itu pun menggerakkan kaki kanan beliau dan cuba memijaknya.

SP6 (another BPR officer) said:

Saya perhatikan ke arah lelaki India itu dan ia pun perhatikan ke arah saya. Ia kelihatan terkejut. Saya nampak lelaki itu menjatuhkan sesuatu dari tangan kanannya. Saya lihat yang dijatuhkan itu ialah lipatan wang RM1,000 dan RM500 dilipat dua.

See exh P8 — P6 explained why there were no details. 'Tentang wang itu dibuang tidak ditulis di dalam P8 kerana ini saya tulis di dalam diari saya.' The search list was accurate and it established the fact regarding the

- A currency. The case of *Gooi Loo Seng v PP*¹ is not on all fours with our case. It seems to me such evidence looms as large as an elephant. It is therefore quite difficult to explain how the elephant had missed the judge. We can, however, appreciate that oftentimes courts are bombarded with excessive discussions of legal principles by counsel. These can obscure the facts.
- B Nevertheless it remains the duty of each court to sift the facts from fantasy, to distinguish the incidents from inferences and to discover what was, from what could have been.

- C In respect of discrepancies which the learned sessions court judge made much of against the prosecution, I need only remind myself of the wise observations of Abdul Hamid Omar J (as he then was) in *Chean Siong Guat v PP*.²

- D Discrepancies may, in my view, be found in any case for the simple reason that no two persons can describe the same thing in exactly the same way. Sometimes what may appear to be discrepancies are in reality different ways of describing the same thing, or it may happen that the witnesses who are describing the same thing might have seen it in different ways and at different times and that is how discrepancies are likely to arise. These discrepancies may either be minor or serious discrepancies. Absolute truth is I think beyond human perception and conflicting versions of an incident, even by honest and disinterested witnesses, is a common experience. In weighing the testimony of witnesses, human fallibility in observation, retention and recollection are often recognized by the court.

- E *Accomplice*

Mr C Fernando urged the court to treat Ong as an accomplice. I have considered the cases cited. However the report in the defence bundle of *Mohamed Mokhtar v PP*³ held:

- F ... (dismissing the appeal) ... However, in the present case, the evidence was so clearly against the accused that no court using the standards of any reasonable man could possibly have come to any other inference except the clear guilt of the accused.

- G And the same conclusion has to be reached here.

- Our case is different from that in *Rattan Singh v PP*.⁴ The principles of *PP v Yuvaraj*⁵ are however noted. I am inclined towards Storr J's decision that a witness who has made himself an agent for the prosecution before the actual commission of the offence is not an accomplice. *Sathasivam & Ors v PP*⁶ notes of cases decided in 1948 in Ipoh. The definition of 'corroboration' is well established by the House of Lords in *DPP v Kilbourne*.⁷

- H I have also considered the defence citations of *Tengku Mahmood v PP*,⁸ *PR lwn Ahmad bin Semial*,⁹ *PP v Lim Eng Chye*,¹⁰ *Darshan Lal v Delhi Admin*,¹¹ *Khoo Cheng Huat v PP*,¹² *TN Nathan v PP*,¹³ *Syed Abu Bakar bin Ahmad v PP*,¹⁴ *PR v Kang Ho Soh*¹⁵ and *Shanmugan v PP*.¹⁶

- I On the other hand, the court has to weigh the authorities cited by the prosecution including *PP v Padi bin Abdullah*,¹⁷ *PP v Mohamed Ali*,¹⁸ *Attan bin Abdul Gani v PP*¹⁹ at p 145, *Ramly bin Md Yassin & Ors v PP*,²⁰ *PP v Teh Cheng Poh*,²¹ *Mohamed Mokhtar v PP*,²² and *Lionel de Silva v R*.²³

I am in agreement with *PP v Ling Tee Huah*,²⁴ where it was held that: ... (allowing the appeal) ... corroborative evidence need not be direct. It is sufficient if it is merely circumstantial evidence of the accused's connection with the offence.

A

But in our case, there is overwhelming evidence against the accused.

B

Defence

The evidence of the accused (the respondent here) and DW2, is, in my opinion, insufficient to rebut the elements of the charge. As Mahadev Shankar J said in *Mohd Motta bin Shariff v PP*.²⁵

C

He must go further and throw a reasonable doubt on the prosecution's evidence or else at least give a version which is equally consistent with his innocence which version has to have the required degree of credibility.

On all the evidence that the sessions court had, I am of the opinion the court cannot fly in the face of the facts.

D

Reverting to the close of the prosecution case

Let me re-examine the evidence in the records so as to give the respondent another opportunity to have his name cleared. I now ask these questions:

(a) Can the authority of the Supreme Court in *Khoo Hi Chiang v PP and another appeal*²⁶ overturn the High Court's order that the defence be called on the ground there was sufficient evidence at the close of the prosecution?

E

(b) Was that ruling based on a maximum evaluation of the evidence?

F

Having perused all the records of appeal and the facts as found by the learned sessions court judge, I conclude that the learned High Court judge had applied the stringent test and paid due regard to the authority of *PP v Yuvaraj*⁵ and *PR v Kang Ho Soh*.¹⁵ I have also referred to *A Treatise on the Law Relating to Bribery and Corruption* by RK Soonavala (1964) at pp 52 and 233 which confirm my findings.

G

Then once there was a finding that corrupt money was passed (or in this case handed) to the respondent, it was up to the respondent to rebut that the money was not corrupt money or show it was innocently given, eg as a loan or towards purchase of goods say from Singapore or elsewhere or as a gift between friends. This was not satisfactorily explained.

H

Conclusion

I have warned myself that corrupt money can easily be planted or that an innocent man can be quickly framed but from all the evidence gathered by the sessions court judge, this cannot be so in our case.

I

It is indeed a tragedy that the respondent, placed in the position of trust and honour, had decided to abuse it. The legal process is intended to

A punish crimes but sadly many a criminal hides within its bushes. Some of these bushes are fully air-conditioned.

I now reverse the order of the sessions court and I find the respondent guilty of the offence as charged and accordingly, I convict him.

I will now accept mitigation by learned defence counsel if so minded.

B (Counsel offers mitigation on behalf of the respondent.)

The loss of employment cannot be a mitigating factor because the respondent, by committing the act of corruption, had himself terminated his service. Every magistrate is moral, clean and honest. There is no such position as a corrupt magistrate.

C But I do accede to counsel's pleas on behalf of his client. I shall be as lenient under the circumstances as possible. In view of the type of offence, the signal position that has been abused and the seriousness of the crime, I now sentence the respondent to a fine of RM5,000 in default 12 months' imprisonment and to imprisonment for a term of three years to begin from today.

D All exhibits to the prosecution for return to owners or for destruction.

Order accordingly.

Reported by Anne Khoo

E

F

G

H

I